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MAILED

AUG 18 2010

OFFICE OF PETITIONS

In re Application of	:	DECISION ON REQUEST
Nowlin et al.	:	FOR RECONSIDERATION OF
Patent Number: 7,610,248	:	PATENT TERM ADJUSTMENT
Issue Date: 10/27/2009	:	
Application No. 10/028,888	:	
Filing or 371(c) Date: 12/19/2001	:	
Attorney Docket Number:	:	
020375-006500US	:	

This is a decision on the request for reconsideration filed under 37 CFR 1.705(d) on May 13, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand nine hundred fifty-one (1951) days. For the reasons stated below, the request for reconsideration will be treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand eight hundred fifty-five (1855) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand eight hundred fifty-five (1855) days is **GRANTED TO THE EXTENT INDICATED.**

Applicants request reconsideration of the Decision on Request for Recalculation of Patent Term Adjustment In View of Wyeth, mailed on April 21, 2010, which stated the patent term adjustment had been determined to be 1623 days. Applicants assert that the patent term adjustment should be 1951 days.

As to the "A" delay, the period is 7 days, beginning on the day after the date 14 months after the date the application was filed, December 20, 2004, and ending on the date the first Office action was mailed, February 26, 2003. As to the "B" delay, the period is 0 days, not 1773 days. This period begins on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a), and ends on the issue date of the patent, or 1773 days, but not including the number of days beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31, November 12,

2003, and ending on the date of the last decision by the Board of Patent Appeals and Interferences, March 10, 2009, or 1946 days. See, 35 U.S.C. 154(b)(1)(B)(ii). Thus, the “B” delay period is 0 days (1773 days – 1946 days), not 1773 days¹.

Petitioners further state that an additional period of reduction of 3 days for applicant delay should be assessed, in connection with the submission of the application data sheet (ADS) filed on July 23, 2009, after the mailing of the notice of allowance. Petitioners state the period of reduction in connection with the filing of this IDS should be 100 days rather than 97 days.

37 CFR 1.704(c)(10) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or (ii) Four months.

On July 23, 2009, the ADS was filed, after the mailing of a notice of allowance. On October 27, 2009, 97 days after the filing of the ADS filed after the mailing of a notice of allowance, the patent was issued. Accordingly, the period of reduction for applicant delay was properly calculated as 97 days, and no additional reduction is warranted.

The patent term adjustment at the time of issuance of the patent is 1855 days (7 days of Office delay + 0 days of over three years delay + 1946 days of delay for successful appellate review – 98 days of applicant delay).

The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

No fee was required with the subject request for reconsideration. The \$200.00 fee submitted with the petition will be credited to counsel.

¹ The Office notes that where a request for continued examination (“RCE”), has been filed, the period of appeal is only reduced if such appeal period occurred prior to the filing of the RCE. If no RCE has been filed, the period of appeal is reduced if it occurs at anytime during the pendency of application.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand eight hundred fifty-five (1855) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,610,248 B1

DATED : Oct. 27, 2009

DRAFT

INVENTOR(S) : Nowlin et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1675 days.

Delete the phrase "by 1675 days" and insert – by 1855 days--